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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL A. LUTTRULL,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 67A05-0704-CV-224
	)	
AL C. PARKE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE PUTNAM SUPERIOR COURT
The Honorable Robert J. Lowe, Judge
Cause No. 67D01-0610-MI-13

October 11, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael Luttrull ("Lutrull") filed a petition for writ of habeas corpus in the Putnam Superior Court alleging that he is being illegally restrained by the Superintendent of the Putnamville Correctional Facility, Al Parke ("Parke"). The trial court denied Luttrull's petition, and he appeals arguing that his due process rights were violated when his parole was revoked. We affirm.

Facts and Procedural History

In 1997, Luttrull was convicted in the Vanderburgh Circuit Court of Class B felony burglary and Class D felony theft and ordered to serve an aggregate sentence of eighteen years. On July 31, 2004, Luttrull was released to parole. On May 12, 2006, a parole agent reported that Luttrull had violated his parole by failing to report to his parole officer, testing positive for cannabinoids, alcohol, methamphetamines, and amphetamines, and by failing to complete a zero tolerance program.

On June 22, 2006, Luttrull was arrested on the parole violation warrant. Four days later, he pleaded guilty to all parole violations and waived his right to a preliminary hearing. On August 1, 2006, Luttrull pleaded guilty in Vanderburgh Superior Court to Class A misdemeanor false informing and Class A misdemeanor conversion. On September 28, 2006, the parole board determined that Luttrull violated the conditions of his parole and ordered him to serve the balance of his sentence. Luttrull now appeals.

Discussion and Decision

Initially, we observe that in his writ of habeas corpus, Luttrull challenged the revocation of his probation and alleged that he was entitled to immediate release. See Appellee's App. pp. 3-4. Therefore, both the post-conviction rules and habeas corpus

statutes are applicable. See Mills v. State, 840 N.E.2d 354, 357 (Ind. Ct. App. 2006). Because neither party asserts that the trial court erred when it treated Luttrull's writ of habeas corpus as a petition for post-conviction relief, we will proceed to address the merits of the case. See id. at 357-58.

Parolees charged with violations of parole are within the protection of the Due Process Clause of the Fourteenth Amendment. Morrissey v. Brewer, 408 U.S. 471, 482 (1972). As such, parolees are entitled to a two-stage parole revocation procedure: (1) a "preliminary hearing" to determine whether there is probable cause to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions, and (2) a revocation hearing prior to the final decision on revocation to consider whether the facts as determined warrant revocation. Id. at 485-488. The minimum requirements of due process include written notice of the charges of parole violation, disclosure to the parolee of the evidence against him, an opportunity to be heard in person and to present evidence, the right to confront and cross-examine adverse witnesses, a "neutral and detached" hearing board, and a written statement by the fact-finders of the evidence relied upon and the reasons for revoking parole. Id. at 489-90.

Luttrull argues that his parole was improperly revoked because he did not receive a preliminary hearing on the parole violation due to his false informing and conversion convictions. Indiana Code section 11-13-3-9 requires that upon arrest and confinement of a parolee for an alleged violation of a condition to remaining on parole, the DOC shall hold a preliminary hearing to determine whether there is probable cause to believe a violation of a condition has occurred. Because Luttrull pleaded guilty to conversion and

false informing, there was no need to determine whether there was probable cause to believe that he had violated his parole. See Jamerson v. State, 182 Ind. App. 99, 102, 394 N.E.2d 222, 224 (1979) ("[T]he need for a preliminary hearing may be extinguished by the fact that the defendant has pled guilty and been convicted of the crime committed while on parole.").

In addition, Luttrull complains that he did not have a parole revocation hearing within sixty days after he was made available to the Department of Correction. Parole revocation hearings are governed by Indiana Code section 11-13-3-10, which provides, in pertinent part:

> (a) Parole revocation hearings shall be conducted as follows
>
> > (1) A parolee who is confined due to an alleged violation of parole shall be afforded a parole revocation hearing within sixty (60) days after the parolee is made available to the department by a jail or state correctional facility, if:
> >
> > > (A) there has been a final determination of any criminal charges against the parolee; or
> > >
> > > (B) there has been a final resolution of any other detainers filed by any other jurisdiction against the parolee.

Ind. Code § 11-13-3-10 (2004).

Luttrull pleaded guilty to false informing and conversion on August 1, 2006. On September 24, 2006, he was notified that he committed those criminal offenses in violation of parole. Four days later, a hearing was held and his parole was revoked. Therefore, Luttrull did receive a hearing within sixty days of being made available to the Department of Correction **and** the date of his guilty plea.[1]

[1] A revocation hearing was not held within sixty days of Luttrull's June 22, 2006 arrest for the parole violations of failing to report to his parole officer, testing positive for illegal substances, and failing to complete a zero tolerance program. However, less than sixty days later, Luttrull pleaded guilty to

For all of these reasons, we conclude that Luttrull has not established that his due process rights were violated when his parole was revoked, and therefore, the trial court properly denied Luttrull's petition for writ of habeas corpus.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.

conversion and false informing. Therefore, Luttrull's due process rights were not violated by the parole board's failure to hold a hearing within sixty days of his June 22, 2006 arrest.